United States of America

Before the National Labor Relations Board Region 5 Baltimore MD.

Paragon Systems Inc
Employer

And 05-RC-165376

International Union ,Security, Police and Fire
Professionals of America (SPFPA) Petitioner

And

National League of Justice and Security 05-RC-165539
Professionals (NLJSP) Cross-Petitioner

And Union Rights for Security Officers (URSO)
Intervener

Request for Review in the instant consolidated cases

The Cross-Petitioner (NLJSP) offers a different reading of the seminal case ***NLRB V Burns 406 US 272 (1972)*** than the RD of Region Five. The Cross-Petitioner sees the instant cases through the lenses of two 2015 Paragon cases 5-CA-127523 (JD 55-15) where no Objections were filed and the Board adopted un-amended the findings of Judge Fine and 05-CA-127523 JD 59-15 where on page 21 lines 39-41 of the trial transcript it was found as it was in JD-55-15 that in cases with identical facts that Paragon was more than just a "Burns Successor." In those cases as well as in the instant case Paragon is a perfectly clear successor. Paragon was not only the perfectly clear successor but because of the Service

Contract Act (SCA) particularly 29 CFR 4 and the inclusion of the Presidential Executive Order 13495 in the solicitation. Paragon signed award documents that also included the predecessor Collective Bargaining Agreement (CBA). This makes clear that Paragon was barred from making any unilateral changes , setting any initial terms , refusing to hire any predecessor employee that was not demonstrably unsuitable or changing any of the wage or benefit calculations for the unit.

The Employer committed per se violations of 29 USC 158(a)(1) and 29 USC 158(a)(5) in their letter to unit employees on or about May 1, 2015.

The letter of May 1, 2015 and all communications between the Employer and either the Union or any member of the Bargaining Unit to date are negotiations. The failure of the Intervener (URSO) to move to charge the Employer for these clear violations of the National Labor Relations Act during the seven months and the lapse by URSO of the period of time for filing is an overwhelming violation of their Duty of Fair Representation (DFR).

The fact is that Paragon may have been unable to communicate with any party from URSO claiming to represent the affected membership at 200 Independence AVE SW. The Cross-Petitioner found in March 2015 that representation by the Intervener was so well hidden at not just 200 Independence Avenue but also at other locations that there was evidence that URSO was defunct. The cross-petitioner argued just that in a June 2015 RC case for the same unit producing evidence that URSO had stopped making required annual filings to OLMS and had canceled a retirement fund that the predecessor Employer had issued checks for which were never cashed or returned. The RD of Region Five felt that my evidence did not meet the standard of ***Hershey Chocolate*** for defunctness and so under ***UGL-Unicco 357 NLRB No. 76*** my June 2015 RC petition was barred.

I recommend to the Board that ***348 NLRB 1160 Road and Rail (2006)*** Which was cited UGL-Unicco the Board finds justification for a shorter reasonable insulated period.

The six month period of negotiations from the first meeting between the Employer and the Union is a firm bright-line period for Burn's Successors but a shorter period with additional factors is appropriate when dealing with a "perfectly clear" successor as in the instant case. The Intervener's lack of diligence in this case is exactly the reason for applying a shorter period of time than the six month period when combined with a perfectly clear Successor The fact that the Employer violated 8(a)(1) and 8(a)(5) in their letter of May 1, 2015 and that the URSO violated their duty of fair representation by not filing an 8(a)(5) ULP demonstrates exactly the best reason for an applicable shorter insulation period.

In this particular field of labor negotiations (Government Security Contracting) when dealing a "perfectly clear" successor there is no need for formal face to face negotiations. Phone calls, fax transmissions and communications over the Internet have taken the place of most groups of three or four people facing each other across the table.

In the instant case where the perfectly clear Successor Employer is bound by the NLRA, the SCA as amended, the Non-Displacement of Qualified Workers Executive Order (Executive Order 13495) and a Solicitation issued by an agency of the Federal Government with a predecessor's CBA attached, the Successor may not change the wages, the benefits , the working conditions and is required by signed contract to the Contracting Agency to comply. The only issue for "negotiation" is duration.

The announcement of the Employer of their intent to violate the NLRA in their letter of May 1,2015 and communications between the Employer and a moribund representative are negotiations when dealing with a "perfectly clear" Successor.

This case should proceed to election and the Regional Director should issue a DD and E after a Hearing on the facts. These petitions should not be barred. The Intervener has maintained an invisible profile at the petition location for years. The Intervener has failed to represent the employees in the petitioned for unit. The members of the petitioned for unit have a right to elect a representative that can settle issues with the "perfectly clear " Successor in time to satisfy the

window of the 29 CFR 4.5(2)(a)(ii) which will close May 21,2016. The fact that Master's was replaced by Paragon at the Hubert Humphrey Bldg on June 2015 vice the scheduled date of March 2016 alters the periodicity of the government base year plan with annual renewal options. The particulars of these cases where the gain or loss of a short duration contract between the Federal Contracting Agency and the Employer where wages and working conditions are often set by a party not subject to negotiations or the NLRA means that a perfectly clear Successor and the incumbent Union must move with alacrity. There is no incentive for the Employer to do so and a Union that doesn't harms the members of a petitioned unit and is rewarded for sloth by slavish obedience to a six month window.

The new options included with the Paragon contract that succeeded Masters only allows for an increase in economic terms if the new terms are served on the Contracting Agency no later than 10 days prior to the option year.

> These petitions must be allowed to proceed to election. The insulated period shortened and allowed because of (1) the Lack of diligence by the incumbent Union to proceed with negotiations and (2) the failure of the Incumbent Union to file 8(a)(5) charges on a perfectly clear Successor after that Successor by direct dealing refused to comply with the CBA of the predecessor by a written Communication of May 1,2015.

Respectfully submitted,

For the Cross-Petitioner NLJSP

Ronald A. Mikell, President

CC SPFPA,

Employer

,X Molano NLRB

And URSO